

MEMORANDUM OF LAW

DATE: January 18, 1990

TO: Wendy DeWitt, Housing Commission
FROM: City Attorney
SUBJECT: Article XXXIV - Potential Acquisition of Mt.
Aguilar and Penasquitos Gardens Projects - Two
Presently Privately Owned Federally Subsidized
Housing Projects

You have requested our comments with regard to a proposal by the Housing Commission to acquire two privately owned housing projects containing a total of 816 rental units. The two projects were constructed approximately 20 years ago with federally subsidized mortgages which provided inexpensive financing in exchange for controlled rents. The owners of the projects have the contractual right to pay off the mortgages and thereby relieve themselves of the rent controls.

The Housing Commission is considering acquiring the two projects from the private owners so that the units can remain available to low income tenants. You have asked whether the projects, if acquired by the Housing Commission, would constitute "low rent housing projects" for the purposes of Article XXXIV of the California Constitution.

A review of the law and the various court decisions interpreting Article XXXIV indicates that Article XXXIV does apply and that the projects would, in fact, be "low rent housing projects" if acquired by the Housing Commission for the purpose of retaining the units for low income rental housing.

As you know, the City's voters have authorized the acquisition of several thousand units of low rent housing and it is my understanding that sufficient authorized units remain to allow your acquisition of the 816 units.

The Davis v. City of Berkeley case has still not been scheduled for rehearing by the Supreme Court and, therefore, the present law allows you to proceed with the acquisition of low

rent housing projects with the general authorization granted by the voters in the previous City election. It does not appear necessary to speculate as to what the ultimate decision of the Supreme Court may be or to allow such speculation to limit your activities in accordance with the present state of the law.

If it is the desire of the Housing Commission to attempt to have the 816 units preserved for low income housing without using

the voter authorization, it would be necessary to conform to the requirements of Health and Safety Code section 37001 which, in fact, defines what is not a housing project for the purposes of Article XXXIV. A copy of section 37001 is attached for reference.

In addition, this office concurs with your suggestion that any Article XXXIV acquisitions which are proposed pending the ultimate decision by the California Supreme Court on Article XXXIV ballot authorization requirements include the clear notice of the 60-day comment period and statute of limitation contained in section 36005 of the State Health and Safety Code.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

HOV:ps:559(x043.2)

Attachment

ML-90-11